IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

CANDIDA STOKES,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**CASE NO. 2:07CV686**
	)	
THE CITY OF MONTGOMERY, et al.,	)	
	)	
	)	
Defendants.	)	
	)	

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Defendants, City of Montgomery; Bobby Bright, Mayor; Arthur Baylor, Chief of Police, pursuant to Rule 56 of the *Federal Rules of Civil Procedure*, by and through the undersigned attorney, move the Court for summary judgment as the facts and law of this case show that there is no genuine issue as to any material fact and that as moving party it is entitled to judgment as a matter of law. In support of the Motion for Summary Judgment, Defendants rely on the Pleadings and Plaintiff's Answers and Responses to Discovery and Defendants' Memorandum of Law in Support of Summary Judgment with the following evidentiary submissions attached thereto:

DX 1, EEOC Charge for Plaintiff

DX 2, Right to sue letter

DX 3, Letter from Montgomery Psychiatry Associates

DX 4, Letter from American Behavioral

DX 5, Letter from Park Place Psychiatry

DX 6, Request for admissions Plaintiff

DX7, Deposition of Kevin Murphy

DX 8, Deposition of Art Baylor

DX 9, Deposition of Bobby Bright

DX 10, Deposition of John Carnell.

Plaintiff filed a Three count complaint listing three causes of action violation and retaliation of ADA, Violation and retaliation under Title VII and violation and retaliation under FMLA.

Plaintiff in this case was police officer with the Montgomery Police Department in December of 2005, when she attempted to take her own life by ingesting over the counter sleeping pills. While recovering the Plaintiff was placed on FMLA leave. After returning to work Plaintiff was placed in a light duty position on the back desk of Police headquarters and an investigation into her conduct was ordered by the Division head of the Montgomery Police Department. After the investigation was concluded, the Division Commander, Kevin Murphy, recommended that Plaintiff be terminated for violating two rules of the Montgomery Police Department Handbook. Duty to remain fit and Duites of responsible employment. These charges were forwarded to the Chief of Police who then convened a trial board to hear both sides, the trial board sustained the charge of Duties of responsible employment but did not sustain the Duty to remain fit. The recommendation of the trial board was sent to the Chief who then conducted a hearing of his own. Evidence was again presented and the Chief ruled to uphold the trial board as to the Duties of responsible employment and overturn the trial board and reinstate the Duty to remain fit charge. Both of these charges were forwarded to the Mayor's office where a hearing was conducted by the Executive Assistant to the Mayor Michael Briddell. At the conclusion of the hearing the Mayor terminated the Plaintiff based on the charges brought by the Montgomery Police Department and the possible exposure to liability should the Plaintiff be allowed to remain employed with the City of Montgomery.

Conclusory allegations cannot interpose genuine issues of material fact into the litigation so as to preclude entry of summary judgment. *Fed.Rules Civ.Proc.*Rule 56(c). Defendants' Motion for Summary Judgment is due to be granted.

Submitted this the 12th day of August, 2008.

/s/ Michael D. Boyle
MICHAEL D. BOYLE(BOY032)
Attorney for Defendants

City of Montgomery
Legal Division
P. O. Box 1111
Montgomery, AL 36101-1111
Phone: (334) 241-2050
FAX: (334) 241-2310

CERTIFICATE OF SERVICE

I hereby certify that foregoing *Memorandum of Law in Support of Defendants' Motion for Summary Judgment* has been served upon the following by electronic filing/notification of the United States District Court Middle District of Alabama on the 12th day of August, 2008, properly addressed to all as follows:

Deborah Mattison

/s/ Michael D. Boyle
Of Counsel

EEOC FORM 131 (5/01)

U. S. Equal Employment Opportunity Commission

Ms Kim Fehl
City Attorney
CITY OF MONTGOMERY
P.O. Box 1111
Montgomery, AL 36101

RECEIVED
JUL 21 2006
CITY ATTORNEY'S OFFICE

PERSON FILING CHARGE

Candida Stokes

THIS PERSON *(check one or both)*

☐ Claims To Be Aggrieved

☐ Is Filing on Behalf of Other(s)

EEOC CHARGE NO.

420-2006-03813

NOTICE OF CHARGE OF DISCRIMINATION

(See the enclosed for additional information)

This is notice that a charge of employment discrimination has been filed against your organization under:

☐ Title VII of the Civil Rights Act

☒ The Americans with Disabilities Act

☐ The Age Discrimination in Employment Act

☐ The Equal Pay Act

The boxes checked below apply to our handling of this charge:

1. ☐ No action is required by you at this time.
2. ☒ Please call the EEOC Representative listed below concerning the further handling of this charge.
3. ☒ Please provide by **21-AUG-06** a statement of your position on the issues covered by this charge, with copies of any supporting documentation to the EEOC Representative listed below. Your response will be placed in the file and considered as we investigate the charge. A prompt response to this request will make it easier to conclude our investigation.
4. ☐ Please respond fully by to the enclosed request for information and send your response to the EEOC Representative listed below. Your response will be placed in the file and considered as we investigate the charge. A prompt response to this request will make it easier to conclude our investigation.
5. ☒ EEOC has a Mediation program that gives parties an opportunity to resolve the issues of a charge without extensive investigation or expenditure of resources. If you would like to participate, please say so on the enclosed form and respond by **02-AUG-06** to **Debra B. Leo, ADR Coordinator, at (205) 212-2033**
If you DO NOT wish to try Mediation, you must respond to any request(s) made above by the date(s) specified there.

For further inquiry on this matter, please use the charge number shown above. Your position statement, your response to our request for information, or any inquiry you may have should be directed to:

Murry A. Gosa,
Intake Supervisor

EEOC Representative

Telephone: **(205) 212-2119**

Birmingham District Office - 420
Ridge Park Place
1130 22nd Street, South
Birmingham, AL 35205

Enclosure(s): ☒ Copy of Charge

CIRCUMSTANCES OF ALLEGED DISCRIMINATION

☐ RACE ☐ COLOR ☐ SEX ☐ RELIGION ☐ NATIONAL ORIGIN ☐ AGE ☒ DISABILITY ☐ RETALIATION ☐ OTHER

See enclosed copy of charge of discrimination.

Date	Name / Title of Authorized Official	Signature
July 19, 2006	**Bernice Williams-Kimbrough** **District Director**	Bernice Williams-Kimbrough

DEFENDANT'S EXHIBIT 1

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CHARGE OF DISCRIMINATION This form is affected by the Privacy Act of 1974; see Privacy Act Statement on reverse before completing this form	ENTER CHARGE NUMBER [X] EEOC 420-2006-03813

____ and EEOC
(State or local Agency, if any)

NAME (Indicate Mr., Ms., or Mrs.)		HOME TELEPHONE NO. (Include Area Code)
Ms. Candida Stokes		(334) 897-0304
STREET ADDRESS 2215 Taylor Mill Road	**CITY, STATE AND ZIP** Elba, Alabama 36323	**COUNTY** Coffee

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one list below.)

NAME	NO. OF EMPLOYEES/MEMBERS	TELEPHONE NO. (Include Area Code)
City of Montgomery	Over 15	(334) 241-2532
STREET ADDRESS 320 North Ripley	**CITY, STATE AND ZIP** Montgomery, Alabama 36104	**COUNTY** Montgomery

CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es):	DATE MOST RECENT OR CONTINUING DISCRIMINATION TOOK PLACE (Month, day, year)
[] Race [ ] Color [x] Sex [ ] Religion [ ] Age [x] Disability [] National Origin [x] Retaliation [ ] Other	May 9, 2006

THE PARTICULARS ARE (If additional space is needed, attach extra sheet(s):

Date of Birth: 1/3/72 **Sex:** Female

1. I am a female and I was hired by the City of Montgomery as a police officer on February 15, 2002.

2. As a police officer, during my training I was assigned to third shift patrol. When I completed my training and became a senior Officer, I was assigned to my own route. I was promoted to Corporal in February 2005. I have been qualified for the Corporal position since my promotion in February 2005, and remain qualified for this position today.

3. In December 2005, I attempted suicide. I am a person with a disability as defined by the Americans with Disabilities Act. I have been diagnosed with major depression and sleep deprivation which resulted in part from my depression. *Inter alia*, I am limited in the major life activities of concentrating, sleeping, and communicating with others. I have a history of disability, and was perceived by the Respondent as disabled. I am qualified to perform the essential functions of my job and other positions, with or without reasonable accommodations.

4. Respondent meets the definition of an "employer" as defined by the Americans with Disabilities Act.

Continued on next page

[X] I also want this charge filed with the EEOC. I will advise the agencies if I change my address or telephone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.	NOTARY - (When necessary to meet State and Local Requirements) I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.
I declare under penalty of perjury that the foregoing is true and correct. 07-11-06 Date Candida S. Stokes Charging Party (*Signature*)	SIGNATURE OF COMPLAINANT SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (Day, month, and year)

5. After receiving treatment in January 2006, I returned to work. Shortly thereafter, the Respondent sent me to a doctor for an evaluation. I was released to return to work to my former position by this doctor as well as my own personal doctors. Despite having been cleared to work by several doctors, I was placed in a desk position, rather than in my patrol position.

6. Even though I was able to perform this new position, the Respondent believed I was unfit for duty because of my prior suicide attempt and began proceedings to determine whether I was fit for duty.

7. On May 9, 2006, my employment with the Respondent was terminated. The reasons offered for my termination were (1) that I was not fit for duty and (2) that I engaged in activities which may reflect on the integrity, competency, or ability of the individual to perform his duty, or may reflect negatively on the reputation of the police department. I was told that if the public had found out about my suicide attempt, the public would not think that I should continue to be employed as a police officer. Both my personal doctor and the one the City sent me to found that I was fit for duty. Upon information and belief, male police officers who have suffered from mental health issues have not been terminated.

9. I have been intentionally denied employment opportunities because of my disability, my record of disability, and because I am perceived as disabled.

10. I believe that my termination is because of my gender, female, and because of my disability, history of disability, and the Respondent's perception of me as an individual with a disability.

11. As the result of the above actions, including Respondent's malicious termination of my employment, I have suffered harm, have been injured, and, *inter alia*, have been denied wages, benefits, and an opportunity to pursue gainful employment. As a result, I am entitled to back-pay as well as compensatory and punitive damages, and attorneys' fees and costs. I have also suffered mental distress and hardship.

I declare under penalty of perjury that the foregoing is true and correct.

Candida L. Stokes ______________________ July 11, 2006 ______________________

Signature Date

JUL 11 2006

EEOC Form 161-B (10/96) U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE (*ISSUED ON REQUEST*)

To: Candida Stokes
2215 Taylor Mill
Elba, Alabama 36323

From: Equal Employment Opportunity Commission
Ridge Park Place
1130 South 22nd Street South, Suite 2000
Birmingham, Alabama 35205

RECEIVED MAY 2007 CITY ATTORNEY'S OFFICE

[ ] *On behalf of person(s) aggrieved whose identity is CONFIDENTIAL (29 CFR § 1601.7(a))*

Charge No.	EEOC Representative	Telephone No.
420 2006 03813	Rita W. Sterling, Investigator	(205) 212-2060

(See also the additional information attached to this form.

NOTICE TO THE PERSON AGGRIEVED:

Title VII of the Civil Rights Act of 1964 and/or the Americans with Disabilities Act (ADA): This is your Notice of Right to Sue, issued und Title VII and/or the ADA based on the above-numbered charge. It has been issued at your request. Your lawsuit under Title VII or th ADA **must be filed in federal or state court WITHIN 90 DAYS of your receipt of this Notice.** Otherwise, your right to sue based on th charge will be lost. (The time limit for filing suit based on a state claim may be different.)

[X] More than 180 days have passed since the filing of this charge.

[ ] Less than 180 days have passed since the filing of this charge, but I have determined that it is unlikely that the EEOC wi be able to complete its administrative processing within 180 days from the filing of the charge.

[X] The EEOC is terminating its processing of this charge.

[ ] The EEOC will continue to process this charge.

Age Discrimination in Employment Act (ADEA): You may sue under the ADEA at any time from 60 days after the charge was filed until 90 days after you receive notice that we have completed action on the charge. In this regard, **the paragraph marked below applies to your case:**

[ ] The EEOC is closing your case. Therefore, your lawsuit under the ADEA **must be filed in federal or state court WITHI 90 DAYS of your receipt of this Notice.** Otherwise, your right to sue based on the above-numbered charge will be los

[ ] The EEOC is continuing its handling of your ADEA case. However, if 60 days have passed since the filing of you charge, you may file suit in federal or state court under the ADEA at this time.

Equal Pay Act (EPA): You already have the right to sue under the EPA (filing an EEOC charge is not required.) EPA suits must be brough in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due fo any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

If you file suit based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission

Delner Franklin-Thomas (signature) 4/29/07

Enclosure(s)

Delner Franklin-Thomas, District Director *(Date Mailed)*

cc: Audrey R. Channell
WIGGINS, CHILDS, QUINN
Attorney For CP
The Kress Building,
301 19th Street, North
Birmingham, Alabama 35203

Walter Byars
City of Montgomery
P.O. Box 1111
Montgomery, Alabama 36101

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MONTGOMERY PSYCHIATRY & ASSOCIATES

William C. Freeman, M.D.
David D. Harwood, M.D.

Daryl K. Hamblin, PhD
Mollie E. Isaacson, LCSW

27 February 2006

Re: Candida Stokes

To Whom It May Concern:

This patient is currently under my medical care. At this time, I do feel that she is ready to return to duty as a police officer. If you have questions or require additional information, please feel free to contact my office at (334) 288-9009. Thank you.

Sincerely,

David D. Harwood, M. D.

DDH/ltt

Original letter mailed to: Candida Stokes
4018 Camella Drive
Montgomery, Alabama 36109

DEFENDANT'S EXHIBIT
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2014 Normandie Drive, Montgomery, Alabama 36111-2712 PH (334) 288-9009 FAX (334) 288-9497

Ex #2

American Behavioral

TO: Whom It May Concern

DATE: February 28, 2006

FROM: Linda Holmberg, LPC LH
American Behavioral

RE: Candida Stokes, 1/3/72, 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

The purpose of this memo is to advise that my professional opinion is that Candida Stokes is fit for duty as a police officer with the Montgomery Police Department. I have had the occasion to read Dr. Schaffer's letter of recommendation and so will not go into the amount of detail he alluded to.

Candida began counseling with Cathy Boland Jones approximately 3 years on and off prior to her suicide attempt. Her daughter was counseled by Sharon Bell as well. Since her suicide attempt she has continued counseling on a weekly basis. I have experienced her as being honest with her thoughts and feelings which have been consistent with her affect. She has displayed positive behavioral changes as well as a desire to learn better coping skills. The stresses she had been under including personal relationships, the death of her mother, the Christmas season and sleep deprivation all played a part in her spiraling further into depression which culminated in her suicide attempt.

Candida is now more clear-minded and goal oriented. She denies any suicidal ideation. I do not feel she is a threat to herself or others. I trust her judgment and feel secure in her personal insight.

550 Montgomery Highway, Suite 300
Birmingham, Alabama 35216
(205) 871-7814
Fax (205) 868-9600
www.americanbehavioral.com

DEFENDANT'S EXHIBIT 4

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I would like to take this opportunity to clarify what I believe to be a miscommunication that occurred regarding Candida Stokes. I had a telephone conversation on February 3rd with John Carnell regarding my concern for Candida's reaction to the possibility that she could lose her job. I realize now that I may have miscommunicated that I believed Candida was mentally unstable on that day. That was not the case. I had seen Candida for a limited amount of time and I did not know how she might react to the possible news of the loss of her job. I am ethically responsible for my client as a Licensed Professional Counselor and felt the need to assure her safety. I apologize for any misunderstanding or inconvenience this may have caused the department.

In summation, I reiterate my opinion that I believe Candida Stokes to be fit for any and all duties as a police officer. However, I would like to suggest that you consider another shift due to the sleep deprivation is causes Candida as a single mother.

If I can be of any further service, please do not hesitate to give me a call at 396-9323.

#4

Park Place Psychiatry, LLC
Park Place Center
7051 Fain Park Drive, Suite 117
Montgomery, AL 36117
Ofc: (334) 215-7308 Fax: (334) 215-4427

David D. Schaffer, D.O., Ph.D. ***Judy Heinzman, R.N., C., L.P.C.***

January 20, 2006

John Carnell
Risk Management
City of Montgomery

RE: Fitness for Duty Evaluation of Candida Stokes

Dear Mr. Carnell:

On December 19, 2005, Candida Stokes (DOB 01/03/72; SS# 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) attempted suicide. John Carnell of Risk Management for the City of Montgomery requested that I perform a fitness-for-duty evaluation on Ms. Stokes.

Ms. Stokes arrived on time for her evaluation. She was well groomed, appropriately dressed, and appeared to be in good health. She was cooperative with the evaluation and forthright in her reporting of her suicide attempt. She maintained good eye contact. Her speech was of regular rate, rhythm, volume, and inflection. She was understandably worried about the fate of her job but remained calm and collected. She admitted being anxious about keeping her job but otherwise reported that her mood was stable and she was not feeling depressed. The affect I observed in her was congruent with her reported mood. It was of normal breadth and was appropriate. She was alert and fully oriented. Her thought process was logical and goal directed. She denied having thoughts of harming herself or others. I felt her judgement and insight were good.

She told me that she took 150 tablets of Tylenol-PM. As a police officer she was well aware that this was a lethal dose of Tylenol if not treated. Her attempt failed because a friend went to her house and found her in time to get her the emergency medical treatment she needed. She was taken to Baptist Hospital's emergency room and then admitted to it's intensive care unit where she spent five days. She was transferred from the intensive care unit to the inpatient unit of Baptist Hospital's Meadhaven Psychiatric facility where she spent an additional two days under the care of Dr. Harwood. He discharged her from Meadhaven's inpatient unit and admitted her to Meadhaven's Partial Hospital Program. Dr. Harwood discharged her from the partial hospital program after she had attended for ten days. Since then she has been seeing Linda Holmberg for counseling.

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Based on my fitness for duty evaluation of Ms. Stokes and my prior knowledge of her as a patient, it is my professional opinion that she is fit to return to duty. I based my opinion on a review of the stresses she was under at the time of her suicide attempt and her ability to cope since then.

At the time of her suicide attempt Ms. Stokes was under extreme stress. She went through the stress of a divorce a couple of years ago. A little over six month before her overdose, on May 29, 2005, her mother passed away. Her mother's death coupled with the responsibilities of being a single mother put her under a great deal of stress. She lacks any family members to provide her with support. The only close relative she has is a sister who is not of any help. She has a thirteen year old daughter that she is raising by herself. Tremendous demands were made on her as she strove to holding down a full-time job and raising a daughter without any help.

A very important consideration at the time of her overdose was the chronic sleep deprivation she was experiencing. She reported that she had gone from third shift to first shift, then second shift, and finally back to third shift. Third shift starts at 10:00 PM and lasts until 7:00 AM. She would get off her shift and return home just in time to take her daughter to school. She would return home and attempt to get some sleep before it was time to pick her daughter up from school. She would then attempt to get some additional sleep. In general, she had a short period of time in which to get her sleep and even that time was sporadic. She spent the last part of the day before returning to work cooking dinner and caring for her daughter. At the time of her suicide attempt she was chronically sleep deprived, exhausted, and overwhelmed.

When I evaluated Ms. Stokes she had over two months to consider the factors and stressors that lead up to her overdose. I asked her why she felt she was not at risk of making another suicide attempt. She indicated that during tis period of time she gained a better understanding of herself and her problems. She firmly believes she learned valuable coping skills from the therapy she received during this period. She learned through therapy ways to better manage her time. She has had time to consider the impact that her suicide would have had on her daughter. Ms. Stokes currently remains in therapy. In spite of the seriousness of her overdose, I feel she is mentally and emotionally fit to return to her duties as a police officer. I strongly believe that chronic sleep deprivation and both mental and physical exhaustion were major factors leading to her attempted suicide.

Once again, it is my professional opinion that she is fit to all duties as a police officer. Please call me if you have any further questions. We do not discuss patients without prior authorization; therefore, please be sure to identify yourself and indicate you wish to speak to me regarding Ms. Stokes.

Sincerely,

David D. Schaffer, D.O., Ph.D.

David D. Schaffer, D.O., Ph.D.
Psychiatrist and Medical Director

IN THE UNITED STATES DISTRICT COURT
FOR MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

CANDIDA STOKES,	)	
Plaintiff,	)	
	)	
vs.	)	**CASE NO.: 2:07-cv-686**
	)	
CITY OF MONTGOMERY; ARTHUR BAYLOR, Chief of Police, and BOBBY BRIGHT, Mayor, in their individual and official capacities,	)	
	)	
Defendants.	)	

FIRST REQUEST FOR ADMISSIONS TO PLAINTIFF

COME NOW the Defendants, by and through their undersigned counsel, and propound their First Request for Admissions to Plaintiff and request the Plaintiff to admit or deny the truthfulness of the facts and statements within thirty (30) days of service hereof:

1. Please either admit or deny that you were employed as a sworn law enforcement officer for the City of Montgomery from February 15, 2002, until May 9, 2006.

__✓__ Admit ______ Candida Stokes

______ Deny ______ Candida Stokes

2. Please either admit or deny that during January 2006 you attempted to take your own life by ingesting a quantity of Tylenol PM pills.

______ Admit ______ Candida Stokes

__✓__ Deny ______ Candida Stokes

3. Please admit or deny that subsequent to this attempted suicide you were disciplined by the City of Montgomery with violation of Police Department Rule 1.330, Duties of

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Responsible Employment, specifically "engaging in any activity which may reflect negatively on the integrity, competency, or ability of the individual to perform his duty, or may reflect negatively on the reputation of the Department."

_____ Admit ____________________
Candida Stokes

_____ Deny ____________________
Candida Stokes

Admit I was disciplined but deny date of suicide attempt Candida Stokes

4. Please admit or deny that during this disciplinary process you were afforded several avenues of appeals to include trial board before three superiors in the Police Department, a review by the Chief of Police which was attended by yourself as well as your attorney, and a Mayor's hearing which was attended by yourself and you were represented by an attorney and where you able present evidence in defense of your actions.

_____ Admit ____________________
Candida Stokes

✓ Deny Candida Stokes
Candida Stokes

5. Please admit or deny that you waived your due process right to the Montgomery City County Personnel Board.

_____ Admit ____________________
Candida Stokes

_____ Deny ____________________
Candida Stokes

Admit that I did attend a personell board hearing Candida Stokes

6. Please admit or deny that you know that attempting suicide is a criminal act as defined by the Alabama Code in the State of Alabama.

_____ Admit ____________________
Candida Stokes

✓ Deny Candida Stokes
Candida Stokes

7. Please admit or deny that you were hired by the Elba Police Department in July of 2006, less than two months after your employment with the City of Montgomery was terminated.

✓ Admit — *Candida Stokes* (signature)
Candida Stokes

____ Deny
Candida Stokes

8. Please admit or deny that your duties with the Elba Police Department were substantially the same as those with the Montgomery Police Department to include enforcement of laws for Federal, State, and Municipal Codes as well as investigation of traffic accidents, etc.

✓ Admit — *Candida Stokes* (signature)
Candida Stokes

____ Deny
Candida Stokes

9. Please admit or deny that you have been employed in a law enforcement capacity doing like-kind work since July of 2006 either with Houston County Sheriff's Department or the Elba Police Department.

____ Admit
Candida Stokes

____ Deny
Candida Stokes

Deny only as to Houston County, I am employed with Coffee County Sheriff's Office. Candida Stokes

10. Please admit or deny that you never asked for any accommodation with the Montgomery Police Department for any disability or perceived disability that you may have had.

____ Admit
Candida Stokes

✓ Deny — *Candida Stokes* (signature)
Candida Stokes

11. Please admit or deny that in February of 2006 you were sent for a fitness for duty evaluation which stated that you were fit for duty and that you had no further impairments.

____ Admit ______________________
Candida Stokes

____ Deny ______________________
Candida Stokes

I Admit fit for Duty and I deny no further impairment. Candida Stokes

12. Please admit or deny that you know of no other police officer within the Montgomery Police Department that attempted suicide and was allowed to remain a police officer with the City of Montgomery.

____ Admit ______________________
Candida Stokes

____ Deny ______________________
Candida Stokes

Without sufficient information to admit or deny. Candida Stokes

Respectfully submitted this 30th day of June, 2008.

Michael D. Boyle
Counsel for City of Montgomery
103 N. Perry St.
Montgomery, AL 36104
334-241-2050

CERTIFICATE OF SERVICE

I, Michael D. Boyle, do hereby certify that a true and correct copy of the foregoing has been furnished by hand delivery on this 12 day of ~~June~~ Aug, 2008, to:

Deborah A. Mattison, Esq.
Rachel L. McGinley, Esq.
Wiggins, Childs, Quinn & Pantazis, LLC
The Kress Building
301 19th Street North
Birmingham, Alabama 35203
(205) 314-0500

Michael D. Boyle

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

CASE NUMBER: 2:07-CV-686

CANDIDA STOKES,
Plaintiff,
vs.
THE CITY OF MONTGOMERY, ET AL.,
Defendants.

COPY

S T I P U L A T I O N

IT IS STIPULATED AND AGREED by and between the parties through their respective counsel, that the deposition of Lieutenant Colonel Kevin J. Murphy may be taken before Sara Mahler, CCR, at the offices of Davis & Herrington, at 8650 Minnie Brown Road, Suite 150, Montgomery, Alabama 36117, on the 17th day of June, 2008.

DEPOSITION OF LIEUTENANT COLONEL
KEVIN J. MURPHY

DEFENDANT'S EXHIBIT 7

not an expert in ADA or Family Medical Leave.

Q. Okay. Do you understand that they're -- I mean, do you have an understanding of any reason why an employee could not have their job back when they're off of Family Medical Leave, when they come off of Family Medical Leave?

A. I don't know. We rely on Ms. Montoya over personnel and John Carnell, safety director, and the attorneys to assist us in those type decisions and situations.

Q. Now, with regard to Ms. Stokes, did you talk to John Carnell at all about her continued employment with the city or talk with her at all?

A. Talk with him?

Q. Yes, I'm sorry. Thank you.

A. Yes, I did.

Q. Tell me the gist of your conversations with Mr. Cornell. Is he your only risk management person?

A. That I'm aware of, yes, ma'am.

Q. Okay.
A. He, obviously being the city risk manager, handled the aspect, I guess, of Deputy Stokes' FMLA or ADA, whatever the case may be. Mr. Carnell told me on the phone, and I asked him also to appear at her trial board. Mr. Carnell conveyed to me that he felt keeping her as a police officer was a liability and a risk.
Q. Okay. It sounds like you agreed with him?
A. Yes, ma'am.
Q. And is that basically what -- is that -- in reliance on Mr. Carnell -- am I pronouncing right?
A. Yes, ma'am.
Q. -- is that what led you to recommend Ms. Stokes' dismissal?
A. No, ma'am.
Q. What did he tell you was a liability or concern about keeping Ms. Stokes? What was the concern?
A. Because she had attempted to

take her own life, she posed a risk to the safety of the officers and the public.

Q. Okay. Was there a concern that she might try it again?

A. Yes, ma'am.

Q. A concern maybe that she wasn't stable enough to do her job?

A. Yes, ma'am.

Q. Were you concerned or was he concerned or did he convey that he was concerned that her depression really might interfere with her ability to use good judgment or her -- I guess mental status might interfere with her ability to use good judgment?

A. No, ma'am. He never said that.

Q. Okay. What did he say?

A. What I previously stated, that because she attempted to take her own life, she posed the risk and a liability to the city and to the officers and to the public.

Q. Okay. And my understanding is

your thought -- or his thought was that even
a slight risk would be too much of a risk?
A. Mr. Carnell never used that word, slight. He just said risk.
Q. Some risk. Because there was no way to know that she might try it again, just that there was a possibility she might try to commit suicide again?
A. I'm sorry. I don't understand your question.
Q. My understanding is that Mr. Carnell indicated that -- Of course, nobody knows whether Ms. Stokes would try to commit suicide, but there was the fear that she might try to commit suicide again, and that that made her the risk and liability?
A. You will have to ask Mr. Carnell that question. I don't know how he would answer that.
Q. What was your concern?
A. In as much as what? My concern of what?
Q. About Ms. Stokes being a

liability or risk. You said you also had the concern, what was your concern?

A. I felt that she posed a risk to her fellow officers and to the public because she had tried to take her own life.

Q. And what was the risk? I guess that's what I'm trying to get at, what was the risk?

MR. BOYLE: Object to the form. Go ahead.

A. If she were to find herself in a dangerous situation, or a life-or-death encounter, that she might not act appropriately.

Q. Like give me an example.

A. Faced with a deadly force encounter, and she wanted to end her life, she would allow herself to get shot and killed.

Q. I see.

A. And if she had a partner, an officer with her, they haven't made that choice, and they very well may get killed

A. I'm not on here.
Q. Do you know who made the decision to place, and this is January 26th, 27th, to place Deputy Stokes on administrative leave?
A. No, ma'am, I don't.
Q. You didn't make the decision to put her on administrative leave?
A. No, ma'am.
Q. When did you make the decision to recommend termination? Was it right after she attempted suicide?
A. Oh, no. When I read the investigative file and drew up the papers for charges and specifications, that's when I made my determination.
Q. Okay. All right. And I'm assuming that it was based on the liability issues that factored into it?
A. The facts and evidence in the file.
Q. Okay.
A. Not just the liability, but

the act, itself, the conduct was also a factor.

Q. Right. But the act, itself -- I mean, what I'm hearing about the act itself, is the act itself really raises the issue of the risk and the potential liability meaning she couldn't perform her job?

A. It is a consequence of the act.

Q. Okay. Do you remember when Deputy Stokes returned to work?

A. Not exactly, no, ma'am.

When you say returned to work --

Q. Returned to employment of some sort with the city.

A. I don't specifically.

Q. Who made the decision to put her on the back desk?

A. I spoke to the chief about it, and we decided that she should be on administrative duties until further notice.

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

CASE NUMBER: CV2:07-CV868-WHA

CANDIDA STOKES,
Plaintiff,
vs.

CITY OF MONTGOMERY, ARTHUR BAYLOR,
CHIEF OF POLICE, et al.,
Defendants.

COPY

S T I P U L A T I O N

IT IS STIPULATED AND AGREED by and between the parties through their respective counsel, that the deposition of ARTHUR BAYLOR may be taken before Leslie K. Hartsfield, at 8650 Minnie Brown Road, Montgomery, Alabama,

DEPOSITION OF ARTHUR BAYLOR

taken on the 19th day of March, 2008

DEFENDANT'S EXHIBIT 8

say, no, I didn't testify to that.
Q. Right.
A. What I was looking at the public safety.
Q. Right. Public safety whether she was potential risk -- whether she was potentially dangerous; right?
A. Public safety concerns of -- for the citizens, for the officers, and then for the officer herself.
Q. So again, as I looked at the paperwork, and I understand you didn't testify, but you had some concerns that there might be a risk of injury or safety to the citizens or the other police officers if she came back after she attempted to commit suicide?
A. Yes.
Q. Kind of a nutshell; right?
A. Yes, ma'am.
Q. And ultimately as I read the paper, it was determined that since the

city couldn't rule out a potential risk that she might be a safety risk or injure citizens or other police officers, the decision was made not to bring her back?

A. Not -- I think she was there. She was dismissed.

Q. Right. She was not allowed to come back as a patrol officer. The decision was made that she should be dismissed because the city felt that it couldn't rule out the possibility of a risk that she might either injure citizens or injure other police officers?

A. I think what we dismissed her on was the two charges that were brought against her due to remain fit, rules and regulations of policies and procedures and duties of responsible employment, that's why she was terminated.

Q. I understand that. But in

looking at the testimony and especially Mr. Carnell's testimony, what -- what it looks like is that the reason that she -- ultimately the reason she was found -- I mean, kind of bottom line the rule, the reason that she was terminated was because there was -- there continued to be that safety risk or harm?

MR. BOYLE: Object to the form.

A. Again, I can answer it the best way I know how to. Due to the public safety concern for the citizens, for the officers, for fellow officers and then for the officer herself. And she was charged with under the rules and regulations that we all supposedly follow or have to follow and she violated that.

Q. Did the city have any evidence that she was not capable of returning to her job, that she actually, in fact, wasn't capable of returning to

A. Where are you? I'm not sure.

Q. I'm sorry. Page 10.

A. Where?

Q. About -- almost half of the way down. Right here (indicated).

A. This one?

Q. No. Right there (indicated).

A. Okay. What about it?

Q. Well, I'm asking -- you've read that; correct?

A. Yes, ma'am, just read it.

Q. And my understanding is you two had such -- had a similar concern; is that right?

A. About the public safety, yes.

Q. What did you think she might do?

MR. BOYLE: Object to the form.

A. What?

Q. What did you think she might do that --
A. She already tried to kill herself. And if she tried that again and she had a partner or a citizen out there and didn't respond, that would be a problem, a public safety issue.
Q. So you're saying that if she killed herself while on duty, then she couldn't respond?
A. Right. And leaves her partner also or her back-up or if she was a back-up, it creates a public service -- a public safety concern.
Q. What were some other -- what were some other safety concerns?
A. Like I said earlier, for the -- other citizens, other officers, and for herself also.
Q. Right. I'm just trying to figure out what -- other than attempting to kill herself while on duty, any other concerns that you thought?

A. Just what I just said, that she wouldn't -- if she didn't do her job, like she tried to kill herself, that would put other people in harm's way.

Q. Now, Mr. Carnell essentially testifies that he didn't think that Ms. or that Deputy Stokes was really capable of coming back and performing her job duties and sounds like you essentially don't disagree with that, am I right?

A. As far as I'm concerned?

Q. Yes.

A. I don't know what John Carnell thinks, but what I think is no. From the act that she committed, there is a problem with that act, yes, ma'am.

Q. And that would interfere -- that would really mean she couldn't satisfactorily perform her job duties?

A. I see a problem with the act that she committed, yes, ma'am.

Q. Right. But the act she committed and the safety concerns associated with it, meant that you basically thought there was enough of a concern that she couldn't perform her job duties?

A. She committed an act that in my opinion created a public safety concern and so that's why I recommended dismissal.

Q. And her -- but I'm assuming if you thought that she could successfully complete her job duties, you wouldn't have recommended dismissal? If you thought she could have come back and safely performed her job duties, you wouldn't have recommended that she be dismissed, I'm assuming?

MR. BOYLE: Object to the form.

Q. Am I right?

A. We go by the rules and regulations of the police department and

Police Department's rules and regulations and I felt she should be dismissed.

Q. Well, did you think she could safely perform her job or not?

A. I'm -- I think what she did created a problem and violated the rules of the police department, period. That -- I mean, that's it. That's what she did. Once you violate the rules of the police department, we go by that. We go by your violation of the rules of the police department.

Q. But my question to you is and I'm entitled to an answer on this. Please bumblebee it. Do you think that she could have safely performed her job when you recommended her termination or not?

A. Okay. For the fourth time, my answer is --

Q. I need a yes or no. Do you think she could have safely performed

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

CIVIL ACTION NO.: 2:07-cv-686

COPY

CANDIDA STOKES,
Plaintiff,
vs.
THE CITY OF MONTGOMERY, et al.,
Defendants.

S T I P U L A T I O N

IT IS STIPULATED AND AGREED by and between the parties through their respective counsel, that the deposition of Mayor Bobby Bright may be taken before Angela Smith McGalliard, RPR, CRR, at the offices of Mayor Bright, at 103 N. Perry Street, Montgomery, Alabama 36104, on the 30th day of June, 2008.

DEPOSITION OF MAYOR BOBBY BRIGHT

DEFENDANT'S EXHIBIT 9

with found that out and started -- and started using that against her in some form or fashion? That could create tremendous liability for her, but also for the City of Montgomery.

Q. Okay. You said you don't know if she could be the type of police officer that would be -- and I'm recharacterizing you but I don't mean to, so correct me if I'm wrong.

A. Okay.

Q. You didn't know if she could be the type of police officer that would be appropriate for the Montgomery Police; is that essentially what you're saying?

MR. BOYLE: Object to the form.

A. Not with the fact that she acted out her depression. That's the bottom line here, I think, more than anything. I think bottom line is, had she not taken that, I think, the extreme step, the ultimate step of self-destruction, we would it, and her go out on the job, and create liability for herself, and even get hurt or killed herself by someone, you know, that we -- and we would not even know that she's having a problem with failing to take her medication properly. There are -- And she could go out and be taking her medication and not -- and not be responding to it properly and shoot somebody or hurt somebody and expose the City to liability and herself, again. And, yet, you know, you don't ever know. You're asking me my conjecture on some -- on what could happen. It could be a variety of different things that could happen.

Q. Well, do you know whether she was on medication?

A. I have no idea.

Q. Okay. So maybe she wasn't on medication to take?

A. I don't know.

Q. Is that right?

A. I have no idea.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

COPY

CIVIL ACTION NO.: 2:07-cv-686

CANDIDA STOKES,

Plaintiff,

vs.

THE CITY OF MONTGOMERY, et al.,

Defendants.

S T I P U L A T I O N

IT IS STIPULATED AND AGREED by and between the parties through their respective counsel, that the deposition of John Carnell may be taken before Angela Smith McGalliard, RPR, CRR, at the offices of Davis & Herrington, at 8650 Minnie Brown Road, Ste: 150, Montgomery, Alabama 36117, on the 30th day of June, 2008.

DEPOSITION OF JOHN CARNELL

DEFENDANT'S EXHIBIT 10
tabbies

FREEDOM COURT REPORTING

Q. And what did you hear?
A. I heard she was going to be terminated, dismissed.
Q. Okay. What was your understanding as to why she was terminated?
A. Because of the incident of committing suicide -- or attempting to commit suicide, excuse me.
Q. Okay. Now, you testified at the investigation involving Deputy Stokes, did you not?
A. Yeah. The trial board down there at the police department.
Q. Yeah. You testified --
A. I remember that.
Q. And do you remember testifying that you thought that Deputy Stokes was -- could possibly pose a risk?
A. I was -- I think I testified that I was concerned that she could possibly pose a risk, based on the job that she had to do out on the streets.
Q. And what would you base that

A. Uh-huh.
Q. I'm sorry, you need to say yes.
A. Yes. Yes.
Q. Now, am I understanding your testimony now that -- Well, strike that.
Do you know whether anybody else -- Well, did anybody else at -- at the City talk with you about any concerns that they may have had regarding liability?
MR. BOYLE: Object to the form.
A. Not to my knowledge.
Q. Okay. What were your concerns about liability?
A. As a risk manager, I was concerned about liability if something happened out on the streets that was involving Candida Stokes, that it would present a liability to the City because of the history she had.
Q. Okay. Why would -- Strike that.

But you didn't have any evidence that she was a risk or a liability concern?
A. No, ma'am.
Q. No medical evidence?
A. No, ma'am.
Q. Are you aware that under the federal law, decisions regarding a person's ability to work have to be made on objective medical evidence?
MR. BOYLE: Object to the form.
A. No, I'm not.
Q. Okay. And then -- Okay. You indicate down here, halfway down the page, that if you didn't have concerns about liability, you would not have forwarded her for a fitness-for-duty evaluation.
A. Uh-huh.
Q. I'm sorry?
A. Yes. Yes. I'm sorry.
Q. Again, I guess what I have to ask you, is why bother to forward her for a